

State of Arizona
Senate
Forty-eighth Legislature
First Regular Session
2007

SENATE BILL 1023

AN ACT

AMENDING SECTIONS 14-5425, 32-1365.02, 36-327, 36-831, 36-843, 36-844 AND 36-845, ARIZONA REVISED STATUTES; RELATING TO BURIAL RESPONSIBILITY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 14-5425, Arizona Revised Statutes, is amended to
3 read:

4 14-5425. Distributive duties and powers of conservator

5 A. A conservator may expend or distribute income or principal of the
6 estate without court authorization or confirmation for the support,
7 education, care or benefit of the protected person and the person's
8 dependents in accordance with the following principles:

9 1. The conservator shall consider recommendations relating to the
10 appropriate standard of support, education and benefit for the protected
11 person made by a parent or guardian, if any. The conservator may not be
12 surcharged for sums paid to persons or organizations actually furnishing
13 support, education or care to the protected person pursuant to the
14 recommendations of a parent or guardian of the protected person unless the
15 conservator knows that the parent or guardian is deriving personal financial
16 benefit therefrom, including relief from any personal duty of support, or
17 unless the recommendations are clearly not in the best interests of the
18 protected person.

19 2. The conservator shall expend or distribute sums reasonably
20 necessary for the support, education, care or benefit of the protected person
21 and the person's dependents with due regard to:

22 (a) The size of the estate, the probable duration of the
23 conservatorship and the likelihood that the protected person, at some future
24 time, may be fully able to be wholly self-sufficient and able to manage
25 business affairs and the estate.

26 (b) The accustomed standard of living of the protected person and the
27 person's dependents.

28 (c) Other funds or sources used for the support of the protected
29 person.

30 3. With respect to the affairs and estate of a minor, the conservator
31 shall also consider the following factors in making estate distributions:

32 (a) The financial responsibility and financial resources of the
33 parents of the child.

34 (b) Extraordinary custodial responsibilities undertaken by the parent
35 or parents as the result of the child's physical or mental condition and the
36 effect of these extraordinary responsibilities on appropriate gainful
37 employment of the parent.

38 (c) The physical and mental condition of the child and the child's
39 medical and educational needs. Any incidental benefit to other members of
40 the child's household derived from a distribution is not a disqualifying
41 factor.

42 (d) If the child is permanently and totally disabled, the standard of
43 living the child should reasonably expect to enjoy given the financial
44 resources available to the child.

1 4. The conservator may expend funds of the estate for the support of
2 persons legally dependent on the protected person and others who are members
3 of the protected person's household, who are unable to support themselves,
4 and who are in need of support. If benefits are being paid by the veterans
5 administration to the conservator, such income may be expended only for the
6 support of the protected person and the person's spouse and minor children,
7 except upon petition to and prior order of the court after a hearing.

8 5. Funds expended under this subsection may be paid by the conservator
9 to any person, including the protected person, to reimburse for expenditures
10 which the conservator might have made, or in advance for services to be
11 rendered to the protected person when it is reasonable to expect that they
12 will be performed and where advance payments are customary or reasonably
13 necessary under the circumstances.

14 6. A conservator, in discharging the responsibilities conferred by a
15 court order and this section, shall implement the principles described in
16 section 14-5408 to the extent possible.

17 B. When a minor who has not been adjudged disabled under section
18 14-5401, paragraph 2 attains majority, the conservator, after meeting all
19 prior claims and expenses of administration, shall pay over and distribute
20 all funds and properties to the former protected person as soon as possible.

21 C. When the conservator is satisfied that a protected person's
22 disability, other than minority, has ceased, the conservator, after meeting
23 all prior claims and expenses of administration, shall pay over and
24 distribute all funds and properties to the former protected person as soon as
25 possible.

26 D. If a protected person dies, the conservator may deliver to the
27 court for safekeeping any will of the deceased protected person which may
28 have come into the conservator's possession or deliver the will to the
29 personal representative named in the will. If the will is delivered to the
30 personal representative named in the will, a copy of the will shall be filed
31 with the court in the conservatorship proceeding. If the will is filed with
32 the court the conservator shall inform the personal representative or a
33 beneficiary named therein that the conservator has done so, and retain the
34 estate for delivery to a duly appointed personal representative of the
35 decedent or other persons entitled thereto. If after forty days from the
36 death of the protected person no other person has been appointed personal
37 representative and no application or petition for appointment is before the
38 court, the conservator may apply to exercise the powers and duties of a
39 personal representative so that the conservator may proceed to administer and
40 distribute the decedent's estate without additional or further appointment.
41 The conservator may include in such an application a request to probate the
42 will of the deceased protected person. On receipt of an application, the
43 registrar, after making the findings required pursuant to section 14-3303,
44 shall issue a written statement of informal probate and shall endorse the
45 letters of the conservator. The registrar may also enter the will of the

1 deceased protected person to probate. The statement of the registrar under
2 this section shall have the effect of an order of appointment of a personal
3 representative as provided in section 14-3308 and chapter 3, articles 6
4 through 10 of this title, except that the estate in the name of the
5 conservator, after administration, may be distributed to the decedent's
6 successors without prior re-transfer to the conservator as personal
7 representative.

8 E. If a protected person dies, and on reasonable inquiry the
9 conservator is unable to locate any person specified in section 36-831,
10 subsection A, ~~paragraph~~ PARAGRAPHS 1, 2 or 3 THROUGH 10 willing to assume the
11 duty of burying the body of the decedent or making other funeral and
12 disposition arrangements, the conservator may make reasonable burial or other
13 funeral arrangements, the cost of which is a charge against the estate.

14 F. The estate of a deceased protected person is liable for any unpaid
15 expenses of the conservator's administration, and such expenses are a lien on
16 property transferred by the conservator to the decedent's personal
17 representative.

18 Sec. 2. Section 32-1365.02, Arizona Revised Statutes, is amended to
19 read:

20 32-1365.02. Authorizing agents; consent for cremation,
21 disinterment or embalming; definition

22 A. Except as provided in section 32-1365.01 and in subsection E of
23 this section, it is unlawful to cremate or disinter a dead human body without
24 prior written consent of the authorizing agent.

25 B. Except as provided in section 32-1365.01, it is unlawful to embalm
26 a dead human body without prior oral or written consent of the authorizing
27 agent.

28 C. A funeral establishment shall create a written record of an oral
29 consent given pursuant to this ~~subsection~~ SECTION that includes all of the
30 following:

- 31 1. The name of the authorizing agent.
- 32 2. The relation of the authorizing agent to the deceased.
- 33 3. The date and time that consent was given.
- 34 4. The name of the person who obtained the consent.
- 35 5. Any other information required by the board.

36 D. In determining who the proper authorizing agent is, the ~~following~~
37 order of preference ~~governs:~~ IS THE SAME AS PROVIDED IN SECTION 36-831. IF
38 THERE IS MORE THAN ONE MEMBER IN A CATEGORY LISTED IN SECTION 36-831 ENTITLED
39 TO SERVE AS THE AUTHORIZING AGENT, FINAL ARRANGEMENTS MAY BE MADE BY ANY
40 MEMBER OF THAT CATEGORY UNLESS THAT MEMBER KNOWS OF AN OBJECTION BY ANOTHER
41 MEMBER OF THE CATEGORY. IF AN OBJECTION IS KNOWN, FINAL ARRANGEMENTS SHALL
42 BE MADE BY A MAJORITY OF THE MEMBERS OF THE CATEGORY WHO ARE REASONABLY
43 AVAILABLE.

- 44 ~~1. The surviving spouse.~~
- 45 ~~2. A surviving adult child.~~

1 ~~3. A surviving parent.~~

2 ~~4. A surviving adult brother or sister.~~

3 ~~5. For cremation or embalming, any other person or organization that~~
4 ~~is willing to assume legal and financial responsibility for the cremation or~~
5 ~~embalming. Preference under this paragraph shall be given in the following~~
6 ~~order:~~

7 ~~(a) The executor of the decedent's estate.~~

8 ~~(b) The guardian of the decedent at the time of death.~~

9 E. On the order of a court or a county medical examiner, or a person
10 performing the duties of a county medical examiner, a dead human body shall
11 be disinterred.

12 F. If none of the persons listed in ~~subsection D~~ SECTION 36-831 is
13 willing or financially capable of providing for the cremation or embalming of
14 a dead human body, the public fiduciary or other person who is designated by
15 the county in which a death occurs to handle funeral arrangements may order
16 the cremation or embalming.

17 G. A funeral establishment, an employee or agent of a funeral
18 establishment or a licensee shall exercise due diligence to obtain the
19 consent required pursuant to this section from the proper authorizing agent.
20 IT IS AN AFFIRMATIVE DEFENSE TO ANY ACTION OR CLAIM BROUGHT AGAINST A
21 CREMATORY, CEMETERY OR FUNERAL ESTABLISHMENT RELATING TO THE DISPOSITION OF A
22 DEAD HUMAN BODY THAT THE CREMATORY, CEMETERY OR FUNERAL ESTABLISHMENT RELIED
23 IN GOOD FAITH ON THE DIRECTION OF A PERSON WHO CLAIMED TO BE THE AUTHORIZING
24 AGENT IN PROVIDING FOR THE LAWFUL DISPOSITION OF A DEAD HUMAN BODY. THE
25 DECISION OF A CREMATORY, CEMETERY OR FUNERAL ESTABLISHMENT TO CREMATE OR
26 OTHERWISE PROVIDE FOR THE LAWFUL DISPOSITION OF A DEAD HUMAN BODY IN RELIANCE
27 ON THE DIRECTION OF A PERSON WHO CLAIMS TO BE THE AUTHORIZING AGENT IS
28 PRESUMED TO BE IN GOOD FAITH UNLESS THE CREMATORY, CEMETERY OR FUNERAL
29 ESTABLISHMENT HAS ACTUAL KNOWLEDGE THAT THE CLAIM IS FALSE.

30 H. IF THE AUTHORIZING AGENT IS NOT REASONABLY AVAILABLE OR UNABLE TO
31 ACT AS THE AUTHORIZING AGENT, THE PERSON'S RIGHT TO BE THE AUTHORIZING AGENT
32 PASSES AS FOLLOWS:

33 1. TO ANOTHER PERSON OR CATEGORY OF PERSONS IN THE SAME DEGREE OF
34 RELATIONSHIP TO THE DECEDENT AS THE PERSON WHO IS NOT REASONABLY AVAILABLE OR
35 UNABLE TO MAKE FINAL ARRANGEMENTS FOR THE DECEDENT.

36 2. TO THE NEXT PERSON OR CATEGORY OF PERSONS IN THE ORDER OF
37 PREFERENCE PRESCRIBED IN SUBSECTION D OF THIS SECTION.

38 I. IT IS PRESUMED THAT THE AUTHORIZING AGENT IS NOT REASONABLY
39 AVAILABLE TO ACT AS AUTHORIZING AGENT IF THE CREMATORY, CEMETERY OR FUNERAL
40 ESTABLISHMENT AFTER EXERCISING DUE DILIGENCE HAS BEEN UNABLE TO CONTACT THE
41 INDIVIDUAL OR IF THAT PERSON HAS BEEN UNWILLING OR UNABLE TO MAKE FINAL
42 ARRANGEMENTS FOR THE DISPOSITION OF THE DECEDENT WITHIN FIFTEEN DAYS AFTER
43 THE INITIAL CONTACT BY THE CREMATORY, CEMETERY OR FUNERAL ESTABLISHMENT. IF
44 A PERSON IN A PRIOR CATEGORY MAKES AN INITIAL CONTACT WITH THE CREMATORY,
45 CEMETERY OR FUNERAL ESTABLISHMENT OR BECOMES ABLE BEFORE THE FINAL

1 DISPOSITION OF THE DECEDENT, THAT PERSON RESUMES THAT PERSON'S RIGHT TO SERVE
2 AS THE AUTHORIZING AGENT.

3 J. ANY DISPUTE AMONG ANY OF THE PERSONS LISTED IN SUBSECTION D OF THIS
4 SECTION CONCERNING THE RIGHT TO CONTROL THE DISPOSITION, INCLUDING CREMATION,
5 OF A DECEDENT'S REMAINS SHALL BE RESOLVED BY THE PARTIES TO THE DISPUTE OR BY
6 A COURT OF COMPETENT JURISDICTION IN ORDER TO EXPEDITE THE RESOLUTION OF A
7 DISPUTE AMONG THE PARTIES LISTED IN SUBSECTION D OF THIS SECTION.

8 K. FOR THE PURPOSES OF THIS SECTION "REASONABLY AVAILABLE" MEANS ABLE
9 TO BE CONTACTED BY THE CREMATORY, CEMETERY OR FUNERAL ESTABLISHMENT WITHOUT
10 UNDUE EFFORT AND WILLING TO ACT WITHIN FIFTEEN DAYS AFTER THE INITIAL CONTACT
11 BY THE CREMATORY, CEMETERY OR FUNERAL ESTABLISHMENT.

12 Sec. 3. Section 36-327, Arizona Revised Statutes, is amended to read:

13 36-327. Disinterment-reinterment permit

14 A. Except as otherwise provided by law, a disinterment-reinterment
15 permit is required before a person disinters human remains. The state
16 registrar shall provide a permit to disinter human remains either by a court
17 order issued in this state or by the written consent of the decedent's family
18 member who has the highest priority. **THE ORDER OF PRIORITY IS THE SAME AS**
19 **PROVIDED IN SECTION 36-831. ~~The priority is as follows:~~**

20 ~~1. Spouse of the decedent at the time of death.~~

21 ~~2. All adult offspring.~~

22 ~~3. Parents.~~

23 ~~4. All adult siblings.~~

24 ~~5. Any other family member of legal age.~~

25 B. A disinterment-reinterment permit is not required if disinterment
26 and reinterment ~~occurs~~ **OCCUR** in the same cemetery for ordinary relocation or
27 for reasons of internal management of the cemetery.

28 Sec. 4. Section 36-831, Arizona Revised Statutes, is amended to read:

29 36-831. Burial duties; notification requirements; failure to
30 perform duty; definitions

31 A. Except as provided pursuant to subsection G of this section, the
32 duty of burying the body of or providing other funeral and disposition
33 arrangements for a dead person devolves in the following order:

34 1. If the dead person was married, on the surviving spouse.

35 2. If the dead person was a minor, on the parents.

36 3. ~~If the dead person has no surviving spouse,~~ On the adult children
37 of the dead person **IF:**

38 (a) **THE DEAD PERSON HAS NO SURVIVING SPOUSE.**

39 (b) **THE DEAD PERSON WAS LEGALLY SEPARATED FROM THE PERSON'S SPOUSE.**

40 (c) **A PETITION FOR DIVORCE OR FOR LEGAL SEPARATION FROM THE DEAD**
41 **PERSON'S SPOUSE WAS FILED BEFORE THE PERSON'S DEATH AND REMAINS PENDING AT**
42 **THE TIME OF DEATH.**

43 4. **ON THE DEAD PERSON'S PARENT.**

44 5. **ON THE DEAD PERSON'S ADULT SIBLING.**

45 6. **ON THE DEAD PERSON'S ADULT GRANDCHILD.**

1 7. ON THE DEAD PERSON'S GRANDPARENT.

2 8. ON AN ADULT WHO EXHIBITED SPECIAL CARE AND CONCERN FOR THE DEAD
3 PERSON.

4 9. ON THE PERSON WHO WAS ACTING AS THE GUARDIAN OF THE PERSON OF THE
5 DEAD PERSON AT THE TIME OF DEATH.

6 10. ON ANY OTHER PERSON WHO HAS THE AUTHORITY TO DISPOSE OF THE DEAD
7 PERSON'S BODY.

8 ~~4.~~ 11. If none of the persons named in paragraphs 1, ~~2 and 3~~ THROUGH
9 10 of this subsection are financially capable of providing for the burial or
10 other funeral and disposition arrangements, or cannot be located on
11 reasonable inquiry, on any person or fraternal, charitable or religious
12 organization willing to assume responsibility.

13 B. If none of the persons named in subsection A of this section is
14 willing or financially able to bury or provide other funeral and disposition
15 arrangements for a dead person, or if the person cannot be located after
16 reasonable efforts have been made to do so, the county in which death occurs
17 shall bury or place in a permanent care crypt the dead body or cremated
18 remains of a dead body. If the decedent is known to be an honorably
19 discharged veteran or the surviving spouse of an honorably discharged
20 veteran, the county shall notify the veterans' administration or a local
21 veteran's organization, or both, of the death and give that organization the
22 opportunity to provide for the person's burial or for other funeral and
23 disposition arrangements. If the organization is unable to provide for the
24 burial of the veteran or the surviving spouse, the county shall ensure that
25 the decedent is properly interred and that burial is made in a veterans'
26 cemetery or a portion of a cemetery that is designated for the burial of
27 veterans and spouses of veterans.

28 C. IF THERE IS MORE THAN ONE MEMBER OF A CATEGORY LISTED IN SUBSECTION
29 A, PARAGRAPH 2, 3, 4, 5, 6, 7, 8 OR 9 OF THIS SECTION ENTITLED TO SERVE AS
30 THE AUTHORIZING AGENT, FINAL ARRANGEMENTS MAY BE MADE BY ANY MEMBER OF THAT
31 CATEGORY UNLESS THAT MEMBER KNOWS OF ANY OBJECTION BY ANOTHER MEMBER OF THE
32 CATEGORY. IF AN OBJECTION IS KNOWN, FINAL ARRANGEMENTS SHALL BE MADE BY A
33 MAJORITY OF THE MEMBERS OF THE CATEGORY WHO ARE REASONABLY AVAILABLE.

34 ~~C.~~ D. If the county medical examiner or person performing the duties
35 of the county medical examiner knows that the dead person is a member of a
36 federally recognized Native American tribe located in this state, the county
37 medical examiner or person performing the duties of the county medical
38 examiner must notify the tribe and give the tribe the opportunity to provide
39 for the person's burial or other funeral and disposition arrangements. If an
40 autopsy is required by section 11-597, the county medical examiner or person
41 performing the duties of the county medical examiner, if possible, shall
42 complete the autopsy and return the remains to the federally recognized
43 Native American tribe located in this state within four calendar days after
44 the determined date of death.

1 ~~D~~. E. A person on whom the duty prescribed in subsection A of this
2 section is imposed who omits or is unwilling to perform that duty within a
3 reasonable time or is prohibited from performing that duty under subsection G
4 of this section is liable to the person performing the duty in an amount of
5 two times the expenses the person incurred in providing for the burial or
6 other funeral and disposition arrangements. The person who performs this
7 duty may recover this amount in a civil action.

8 ~~E~~. F. Notwithstanding the probate requirements of title 14, if a
9 county is required to bury a person pursuant to subsection B of this section,
10 the county may recover the burial costs from the decedent's estate. A
11 financial institution in possession of monies in an account in the decedent's
12 name must reimburse the county for the burial costs on presentation by the
13 county of an affidavit that certifies:

- 14 1. The date of the decedent's death.
- 15 2. That, pursuant to this section, the county performed the decedent's
16 burial.
- 17 3. The total burial costs incurred by the county.

18 ~~F~~. G. A person, a corporation or an agency of government that
19 provides for the burial or other funeral and disposition arrangements on the
20 instructions of a person described in subsection A of this section is immune
21 from civil liability:

- 22 1. For failing to honor the wishes of the decedent or the wishes of a
23 person having a higher priority in subsection A or B of this section if the
24 person, corporation or agency of government was not aware, after reasonable
25 inquiry, of the contrary wishes.
- 26 2. For refusing to follow conflicting directions of persons having the
27 same priority in subsection A of this section.
- 28 3. For following directions of a personal representative that are
29 consistent with the written testamentary instructions of the decedent.

30 ~~G~~. H. The duty to bury or to provide other funeral and disposition
31 arrangements devolves to the next person in the order prescribed pursuant to
32 subsection A of this section if the person who is otherwise responsible for
33 performing this duty is charged with the criminal death of the person to whom
34 the duty is owed. The person who performs this duty may recover costs as
35 prescribed in subsection ~~D~~ E of this section. If the charges against the
36 person on whom this duty originally fell are subsequently dismissed or are
37 resolved in that person's favor on the merits, the person is responsible for
38 only the actual costs.

39 ~~H~~. I. For the purposes of this section, "person" includes a natural
40 person, a corporation, a company, a partnership, a firm, an association, a
41 society, the United States, this state, any territory, state or country, an
42 Arizona federally recognized Native American tribe, any political subdivision
43 of this state or a public or private corporation or partnership or
44 association.

45 ~~I~~. J. For the purposes of this article, "burial" includes cremation.

1 Sec. 5. Section 36-843, Arizona Revised Statutes, is amended to read:
2 36-843. Actions by a third person

3 A. If a person has not executed a document of gift or has not refused
4 to make an anatomical gift, ~~any member of the following classes of persons,~~
5 ~~in the order of priority stated, THE PROPER PERSON TO AUTHORIZE AN ANATOMICAL~~
6 ~~GIFT~~ may make an anatomical gift of all or a part of the decedent's body for
7 any of the purposes prescribed by section 36-846 ~~IN THE SAME ORDER OF~~
8 ~~PREFERENCE PROVIDED BY SECTION 36-831. --~~

9 ~~1. The agent designated in the decedent's health care power of~~
10 ~~attorney.~~

11 ~~2. The decedent's court appointed guardian.~~

12 ~~3. The decedent's spouse, unless the decedent and spouse were legally~~
13 ~~separated.~~

14 ~~4. An adult child of the decedent. If the decedent has more than one~~
15 ~~adult child the hospital or organ procurement agency shall seek the consent~~
16 ~~of a majority of the adult children who are reasonably available for~~
17 ~~consultation. For the purposes of subsection B or D of this section and~~
18 ~~section 36-846, subsection C, the objection of one or more of a minority of~~
19 ~~adult children to the making of an anatomical gift does not invalidate the~~
20 ~~gift.~~

21 ~~5. A parent of the decedent.~~

22 ~~6. If the decedent is unmarried, the decedent's domestic partner~~
23 ~~if another person has not assumed financial responsibility for the patient.~~

24 ~~7. An adult brother or sister of the decedent.~~

25 ~~8. A close friend of the decedent. For the purposes of this~~
26 ~~paragraph, "close friend" means an adult who exhibited special care and~~
27 ~~concern for the decedent and who is willing and able to serve in this~~
28 ~~capacity.~~

29 B. An anatomical gift may not be made by a person listed in subsection
30 A of this section if:

31 1. A person in a prior class is available at the time of death to make
32 an anatomical gift.

33 2. The person proposing to make an anatomical gift knows of a refusal
34 by the decedent made pursuant to section 36-842.

35 3. The person proposing to make an anatomical gift knows of an
36 objection to the making of an anatomical gift by a member of the person's
37 class or a prior class.

38 C. A person listed in subsection A of this section shall give or
39 refuse consent to an anatomical gift by either:

40 1. Signing a document of consent or refusal to consent.

41 2. The person's telegraphic, recorded telephonic or other recorded
42 message, or other form of communication from the person that is
43 contemporaneously reduced to writing.

44 D. An anatomical gift by a person authorized under subsection A of
45 this section may be revoked by any member of the same or a prior class if,

1 before procedures have begun for the removal of a part from the body of the
2 decedent, the physician, surgeon or trained technician removing the part is
3 notified of the revocation.

4 E. A failure to make an anatomical gift under subsection A of this
5 section is not an objection to the making of an anatomical gift or a refusal
6 by that person to make that person's own anatomical gift.

7 Sec. 6. Section 36-844, Arizona Revised Statutes, is amended to read:

8 36-844. County medical examiners; authorization

9 A. The medical examiner may release and permit the removal of a part
10 from a body within that official's custody for transplantation, therapy or
11 research if:

12 1. The examiner has received a request for the part from a hospital,
13 physician, surgeon or organ procurement agency.

14 2. The examiner or organ procurement agency has made a reasonable
15 effort, taking into account the useful life of the part, to locate and
16 examine the decedent's medical records and, if the decedent has not executed
17 a document of gift or has not refused to make an anatomical gift, inform
18 persons ~~listed in~~ PURSUANT TO section ~~36-843~~ 36-831, subsection A of the
19 person's option to make or object to making an anatomical gift.

20 3. The official does not know of a refusal by the decedent or an
21 objection by a person having priority to act ~~as listed in~~ PURSUANT TO section
22 ~~36-843~~ 36-831, subsection A.

23 4. The removal will be by a physician, surgeon or trained technician.

24 5. The removal will not interfere with any autopsy or investigation.

25 6. The removal will be in accordance with accepted medical standards.

26 7. Cosmetic restoration will be done, if appropriate.

27 B. If the body is not within the custody of the medical examiner, the
28 county health officer may release and permit the removal of any part from the
29 body in the county health officer's custody for transplantation, therapy or
30 research if the requirements of subsection A of this section are met.

31 C. An official who releases and permits the removal of a part shall
32 maintain a permanent record of the name of the decedent, the person making
33 the request, the date and purpose of the request, the part requested and the
34 person to whom it was released.

35 Sec. 7. Section 36-845, Arizona Revised Statutes, is amended to read:

36 36-845. Hospitals; required request; search and notification;
37 immunity; authorization form; definition

38 A. The person in charge of a hospital or the person's designee shall
39 establish an organ and tissue procurement for transplant protocol that
40 includes the notification of an appropriate organ procurement organization,
41 that designates hospital or organ procurement agency personnel who may obtain
42 consent to donate an anatomical gift pursuant to subsection B of this section
43 and that requires specified training for the personnel who request consent.

44 B. If at or near the time of death there is no medical record that the
45 decedent has executed a document of gift or refused to make an anatomical

1 gift, the hospital administrator or the administrator's designee shall make
2 reasonable efforts to:

3 1. Discuss the option to make or refuse to make an anatomical gift
4 with the appropriate persons ~~listed in~~ PURSUANT TO section ~~36-843~~ 36-831,
5 subsection A.

6 2. Obtain the written consent or written refusal to make an anatomical
7 gift from the appropriate persons ~~listed in~~ PURSUANT TO section ~~36-843~~
8 36-831, subsection A.

9 3. Request the making of an anatomical gift pursuant to section
10 36-843. If the request is made by a representative of an organ procurement
11 agency that person shall make reasonable efforts to first consult the
12 administrator of the hospital or the administrator's designee to ensure that
13 the request is made with reasonable discretion and sensitivity to the
14 circumstances of the appropriate surrogate decision maker.

15 C. An entry shall be made in the medical record of the patient stating
16 the name and affiliation of the person who made the request and the name,
17 response and relationship to the patient of the person to whom the request
18 was made.

19 D. Information concerning organ or tissue donation solicited by the
20 hospital at the time of hospital admission does not fulfill a hospital's
21 obligation to request an anatomical gift under this section.

22 E. A hospital, person, requestor or entity is not subject to civil
23 damages or legal action as a consequence of good faith acts or omissions
24 related to procurement of parts in compliance with this article. All acts
25 and omissions are presumed to be in good faith unless the acts or omissions
26 are done with intent to maliciously cause injury.

27 F. A consent to donate an anatomical gift constitutes a limited waiver
28 of a patient's confidentiality provided by sections 12-2235 and 12-2292 to
29 the extent that the appropriate organ procurement agency may have access to
30 and may obtain a copy of all or any portion of a medical record necessary to
31 determine whether a person is a suitable organ or tissue donor. A hospital
32 shall release copies of the decedent's medical records to an organ
33 procurement agency on request and may charge the organ procurement agency
34 reasonable copying charges. An organ procurement agency shall keep the
35 records confidential and privileged to the same extent as required of the
36 hospital from which they are obtained.

37 G. Except as provided in subsection H of this section, a consent to
38 make an anatomical gift pursuant to this section is valid only if a requestor
39 provides the person authorized to give consent with a written anatomical gift
40 authorization form that requires that person to initial each specific
41 anatomical gift of organ or tissue that person is authorizing. Changes to
42 the authorization form must be documented in writing as required by this
43 section. The form shall provide the person giving consent pursuant to
44 section 36-843 notice of the opportunity to have a third person physically or
45 telephonically present during the initialing of each specific anatomical gift

1 and signing of the form. The requestor shall document on the form the date,
2 time, ~~AND~~ location OF THE EXECUTION and ~~the~~ ANY third person present for the
3 execution and any amendment of the form. The requestor must provide a copy
4 of the initialed form to the person giving consent.

5 H. If the authorization for an anatomical gift occurs by telephone,
6 the requestor receiving the authorization shall record the conversation. The
7 requestor shall also send a copy of the completed anatomical gift
8 authorization form to the person giving consent. On request, the requestor
9 shall send a transcript or copy of the recorded conversation to the person
10 giving consent.

11 I. For the purposes of this section, "requestor" means a hospital
12 administrator or the hospital administrator's designee, which may include an
13 agent of an organ procurement organization or an agent of an organ
14 procurement agency.